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6 MARITZ INC. d/b/a MARITZ LOYALTY
7 MARKETING,

8 No. C 07-05585 JSW

9 Plaintiff,

10 v.
11 CARLSON MARKETING GROUP, INC.,

12 Defendant.

13 **ORDER GRANTING CARLSON'S
MOTION FOR JUDGMENT ON
THE PLEADINGS**

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15 _____ /
16 Now before the Court is the motion of Carlson Marketing Worldwide, Inc. D/b/a
17 Carlson Marketing Group, Inc. ("Carlson") for judgment on the pleadings. Having carefully
18 considered the motions and the relevant legal authority, the Court hereby GRANTS Carlson's
19 motion for judgment on the pleadings.

20 **BACKGROUND**

21 In April 2006, Maritz and Visa entered into a Master Services Agreement ("MSA")
22 pursuant to which Maritz was obligated to develop, deploy, operate and maintain for Visa and
23 its member banks a points-based software rewards program for use by Visa's cardholders.
24 (Complaint of Maritz at ¶ 10.) Visa's existing rewards program had been developed and
25 maintained by Carlson, but Visa decided to switch the existing rewards program from Carlson
26 to Maritz and improve its capabilities. (*Id.* at ¶¶ 11-12.) The MSA set forth critical milestones
27 and "extremely tight" deadlines for meeting certain requirements. (*Id.* at ¶ 13.) One such
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1 requirement was that “Visa obtain from Carlson and give to Maritz timely, detailed and accurate
2 information” describing the existing rewards program. (*Id.*) Maritz alleges that Carlson, “in an
3 effort to sabotage Maritz’s relationship with Visa and regain Visa’s business for itself, ...
4 deliberately failed to provide that which it was supposed to provide when it was supposed to
5 provide it. Carlson also provided incomplete information, corrupt files and/or files that
6 contained ‘bugs.’” (*Id.* at ¶ 14.)

7 On April 20, 2007, Visa terminated the MSA. (*Id.* at ¶ 4.) In November 2007, Visa
8 filed a complaint against Maritz seeking to compel arbitration. In December 2007, Maritz
9 answered and counterclaimed against Visa and Carlson. Carlson filed an answer to Maritz’s
10 counterclaims on February 19, 2008. On March 18, 2008, the Court stayed the entire action and
11 ordered Visa and Maritz to arbitration. In mid-April 2009, Visa and Maritz settled. Thereafter,
12 Maritz filed a motion to lift the stay and, pursuant to stipulation, filed its current pleading,
13 restyled as a complaint by Maritz against Carlson with one count for intentional interference
14 with contract.

15 The Court addresses additional facts as necessary in the remainder of this Order.

16 ANALYSIS

17 **A. Legal Standards Applicable to Motion for Judgment on the Pleading.**

18 Motions for judgment on the pleadings challenge the legal sufficiency of the claims
19 asserted in the complaint. “For purposes of the motion, the allegations of the non-moving party
20 must be accepted as true Judgment on the pleadings is proper when the moving party clearly
21 establishes on the face of the pleadings that no material issue of fact remains to be resolved and
22 that it is entitled to judgment as a matter of law.” *Hal Roach Studios, Inc. v. Richard Feiner*
23 and Co., Inc.

24, 896 F.2d 1542, 1550 (9th Cir. 1990). However, “[t]he court need not ... accept as
true allegations that contradict matters properly subject to judicial notice....” *Sprewell v.*
25 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

26 While, as a general rule, a district court may not consider any material beyond the
27 pleadings in ruling on a Rule 12(c) motion, a “court may consider facts that are contained in
28 materials of which the court may take judicial notice.” *Heliotrope General, Inc. v. Ford Motor*

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1 *Co.*, 189 F.3d 971, 981 (9th Cir. 1999) (internal quotations and citation omitted). A court may
2 also consider documents attached to the complaint or “documents whose contents are alleged in
3 a complaint and whose authenticity no party questions, but which are not physically attached to
4 the [plaintiff’s] pleading.” *In re Silicon Graphics Inc. Securities Litigation*, 183 F.3d 970, 986
5 (9th Cir. 1999) (internal quotations and citation omitted).

6 **B. Maritz’s Claims Are Time Barred.**

7 By filing an original complaint as a party plaintiff against Carlson, Maritz has
8 essentially initiated a new claim against Carlson more than two years after the events at issue
9 transpired. Therefore, the claim for tortious interference with contract is barred by the
10 applicable statute of limitations. *See Cal. Code Civ. P. § 339*. Under California law, the two-
11 year statute of limitations begins to run no later than the date of the breach or termination of the
12 underlying contract. *See Forcier v. Microsoft Corp.*, 123 F. Supp. 2d 520, 530 (N.D. Cal. 2000)
13 (citing *Trembath v. Digardi*, 43 Cal. App. 3d 834, 836 (1974)) (holding that statute of
14 limitations barred tortious interference with contract claim when it was filed more than two
15 years after defendants allegedly caused the breach of the underlying contract). Maritz alleges
16 that Visa terminated the underlying MSA on April 20, 2007 and Maritz initiated this new claim
17 against Carlson on June 15, 2009. Therefore, the claim is barred by the applicable statute of
18 limitations.

19 In opposition to this claim, Maritz contends that the new claim against Carlson “relates
20 back” to the original complaint between Visa and Maritz and therefore falls within the two year
21 statute of limitations. The Court finds this argument unpersuasive. The complaint is not an
22 amended counterclaim as it was never before asserted against Carlson and there is no
23 antecedent, original complaint to relate back to. *See McAuley v. United States*, 525 F.2d 1108,
24 1110 n.1 (9th Cir. 1975) (citing ruling that an amended counterclaim is controlled by Federal
25 Rule of Civil Procedure 13(f), not Rule 15, and does not relate back) (citing *Stoner v.*
26 *Terranella*, 372 F.2d 89, 91 (6th Cir. 1967) (finding that amendments made pursuant to Rule
27 13(f) for counterclaims do not relate back to the original pleadings)). Maritz’s new complaint
28 stands alone as an original action, and does not relate back to the original complaint between

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1 Visa and Maritz. The Court finds that the new claims against Carlson could have been filed
2 earlier as an original action, but could not have been filed in this action as an amended
3 counterclaim. Therefore, Maritz cannot persuasively claim that this action relates back to the
4 original Visa action and falls within the statute of limitations.

5 Second, Maritz contends that regardless whether this action relates back to the original,
6 the statute of limitations should be tolled under the discovery rule. Under California law, the
7 statute of limitations can be tolled by the discovery rule which delays the accrual of the date of
8 a cause of action until the plaintiff is aware the injury. *Hopkins v. Dow Corning Corp.*, 33 F.3d
9 1116, 1120 (9th Cir. 1994) (citing *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1109 (1988)).
10 Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or
11 should suspect that its injury was caused by wrongdoing. *Jolly*, 44 Cal. 3d at 1110. “A plaintiff
12 need not be aware of the specific ‘facts’ necessary to establish the claim; that is a process
13 contemplated by pretrial discovery. Once the plaintiff has a *suspicion* of wrongdoing, and
14 therefore an incentive to sue, she must decide whether to file suit or sit on her rights.” *Id.* at
15 1111 (emphasis added). Here, Maritz was aware of Carlson’s alleged delays and missed
16 deadlines at the time performance was allegedly required in 2007. Maritz contends that at the
17 time of the termination of its contract with Visa, it “knew that Carlson had failed timely to
18 provide information and strongly suspected that Carlson may have played a role in the
19 termination of the MSA.” (Opp. Br. at 1.) Maritz’s claims that the discovery in the underlying
20 arbitration with Visa confirmed those suspicions does not work to toll the statute of limitations.
21 Maritz admits that it knew of the alleged conduct underlying its claim for tortious interference
22 against Carlson more than two years prior to filing this action. Therefore, the Court is not
23 persuaded that it should toll the statute of limitations period under the discovery rule.

24 Third, Maritz contends that its claim is not barred by the statute of limitations because
25 this Court stayed the underlying action. However, given that Maritz could not have asserted
26 this new claim as an amended counterclaim in the Visa action and only as a separate cause of
27 action against Carlson, the Court finds that its stay of the underlying action pending arbitration
28 did not toll the statute of limitations for any direct action by Maritz.

1 Accordingly, the Court finds that Maritz's claim against Carlson for tortious interference
2 with contract is barred by the applicable two year statute of limitations.

3 **C. Maritz Cannot State a Claim for Tortious Interference.**

4 Regardless whether the new action for tortious interference with contract against
5 Carlson is barred by the statute of limitations, the Court finds that Maritz cannot make out the
6 claim on the merits. A "stranger to a contract may be liable for intentionally interfering with
7 the performance of the contract." *Pacific Gas & Electric Co. v. Bears Stearns & Co.*, 50 Cal.
8 3d 1118, 1126 (1990). "The elements necessary to state a cause of action for intentional
9 interference with contractual relations are '(1) a valid contract between plaintiff and a third
10 party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to
11 induce breach or disruption of the contractual relationship; (4) actual breach or disruption of the
12 contractual relationship; and (5) resulting damage.'" *Mintz v. Blue Cross of California*, 172 Cal.
13 App. 4th 1594, 1603 (2009) (citing *Bears Stearns*, 50 Cal. 3d at 1126).

14 Only a stranger to the contract may be liable for interfering with it. *See Applied*
15 *Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 513 (1994) (holding that a
16 contracting party cannot be held liable in tort for conspiracy to interfere with its own contract;
17 "[t]he tort duty not to interfere with the contract falls only on strangers-interlopers who have no
18 legitimate interest in the scope or course of the contract's performance"). As a matter of law,
19 Carlson was an interested party whose performance was, according to Maritz's own allegations,
20 required under the MSA. Because the contractual obligations at issue here provided for
21 Carlson's performance, it cannot be found to be a stranger to the contract. *See PM Group, Inc.*
22 *v. Stewart*, 154 Cal. App. 4th 55, 57-58 (2007) (holding that because the subcontracts at issue
23 required the performance by the singer Rod Stewart, who was not a party to the contract sued
24 upon, neither Stewart nor his agents could be found liable for the tort of interference with
25 contract).

26 Secondly, regardless of Carlson's position as an interested party under obligation to
27 perform under the MSA, Maritz may not maintain a cause of action for intentional interference
28 with a terminable at-will contract. There is no dispute that the MSA was terminable at Visa's

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1 sole discretion. (*See MSA § XII.A.2(b).*) California law provides that “if a party to a contract
2 is free to terminate the contractual relation when he chooses, ‘there is still a subsisting contract
3 relation; but any interference with it that induces termination is primarily an interference with
4 the future relation between the parties, and the plaintiff has no legal assurance of them.’” *Reeves*
5 *v. Hanlon*, 33 Cal. 4th 1140, 1151 (2004) (citing Restatement (Second) of Torts). Contrary to
6 Maritz’s contention, several courts including this district have held that one cannot maintain a
7 claim for intentional interference with an at-will contract, even in the non-employment context.
8 *See Lovesy v. Armed Forces Benefit Ass’n*, 2008 WL 696991, *11 (N.D. Cal. Mar. 13, 2008)
9 (“[A]s a matter of law, a claim for interference with contract is improper if the contract is ‘at-
10 will’”); *see also Transcription Communications Corp. v. John Muir Health*, 2009 WL 666943,
11 *8 (N.D. Cal. Mar. 13, 2009) (same).

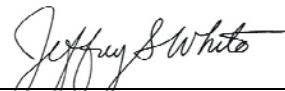
12 Accordingly, the Court finds that regardless whether the complaint against Carlson is
13 time-barred, Maritz also fails to state a claim upon which relief may be granted based both on
14 Carlson’s status as a non-stranger to the contractual obligations under the MSA and because a
15 claim for intentional interference with contract is improper under California law for an at-will
16 contract.

CONCLUSION

17 For the foregoing reasons, the Court GRANTS Carlson’s motion for judgment on the
18 pleadings without leave to amend. A separate judgment shall issue and the Clerk shall close the
19 file.

20 **IT IS SO ORDERED.**

21 Dated: October 30, 2009

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23 JEFFREY S. WHITE
24 UNITED STATES DISTRICT JUDGE

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